

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**
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UNITED STATES OF AMERICA

-against-

Criminal No. 07-641 (S 1) (NGG)

ZEV SALTSMAN,

Defendant
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**XYBERNAUT CORPORATION PETITION ASSERTING LEGAL INTEREST IN
FORFEITED FRAUD PROCEEDS**

Daniel J. Hurson, Esq., signed under the penalty of perjury pursuant to 21 U.S.C.A. Sec. 853(n), hereby files this Petition on behalf of Xybernaut Corporation Asserting Legal Interest in Forfeited Fraud Proceeds. The Petitioner states as follows:

1. It is my understanding that this Petition is due to be filed by April 16, 2010 so it is timely.
2. This Petition concerns \$5 million in funds forfeited under an Order of Forfeiture entered in this case on March 17, 2010 under which the defendant Zev Saltsman, pursuant to his plea agreement, submitted \$3 million in cash to the United States Attorney's Office and consented to the forfeiture of an additional \$2 million in cash that he had previously deposited with the registry of the court as bail in this case (the "forfeited funds").
3. I have read the Order of Forfeiture (the "Order") against Mr. Saltsman (filed March 17, 2010), as well as the Superseding Information (the "Information") of Mr. Saltsman (filed March 11, 2010), and have conferred with counsel concerning these filings.

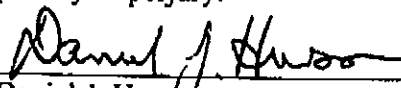
4. I am Special Litigation Counsel to Xybernaut and the steering committee of the Xybernaut Litigation Fund (the “Fund”) established under the terms of the Amended Joint Plan of Reorganization of Xybernaut, Case No. 05-12801, confirmed by the U.S. Bankruptcy Court for the Eastern District of Virginia on Dec. 5, 2006 (the “Plan”). The Litigation Steering Committee of the Fund, as established by the Plan, is composed of representatives of all stakeholders in the Xybernaut bankruptcy estate, including creditors, shareholders, and other claimants. It is the designated entity empowered under Section 5.2 of the bankruptcy plan to pursue any claims against third parties, including Mr. Saltsman, which these stakeholders of the reorganized debtor Xybernaut and its estate may possess. Under the terms of the Plan, Xybernaut Corporation itself has no interest in the Fund, but rather represents the interest of the stakeholders in the Fund in maximizing the value of the Xybernaut estate for the benefit of those participants in the Fund.

5. Based upon my reading of the Superseding Information (the “Information”) and the Order of Forfeiture (the “Order”), and upon consultation with co-counsel, and my understanding of the facts and relevant law, it is my understanding and belief that Xybernaut and its estate have a claim against the forfeited funds, that Xybernaut is a victim of the fraud for purposes of restitution, and that Xybernaut has standing to claim a “constructive trust” over the forfeited funds, superior to the United States’ interest in the forfeited funds. I understand that Xybernaut will be filing along with this Petition a Memorandum of facts and law in support of the Petition. Please refer to Pars. 3-12 of the Memorandum regarding the history of Mr. Saltsman’s investments in Xybernaut; Par. 16 of the Memorandum regarding Xybernaut’s status as a victim and to

the tracing of the profits from the crime into the forfeited funds which have now been forfeited; and Par. 17-33 regarding the right to standing to establish a constructive trust. These paragraphs of the legal Memorandum are incorporated herein.

Accordingly, the Petitioner, Daniel J. Hurson, requests that this Court recognize the legal right, title and interest of Xybernaut and its estate in the forfeited funds. Xybernaut requests a hearing on this Petition.

Respectfully submitted and signed under the penalty of perjury.


Daniel J. Hurson

Dated: April 8, 2010.